



General Assembly

Substitute Bill No. 5670

February Session, 2006

* _____ HB05670ET _____ 041306 _____ *

**AN ACT CONCERNING ENERGY RESOURCE MARKET DISRUPTION
EMERGENCIES AND PRICE GOUGING.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-234 of the 2006 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective from passage*):

4 (a) As used in this section:

5 (1) "Energy resource" shall include, but not be limited to, middle
6 distillate, residual fuel oil, motor gasoline, propane, aviation gasoline
7 and aviation turbine fuel, natural gas, electricity, coal and coal
8 products, wood fuels and any other resource yielding energy;

9 (2) "Seller" shall include, but not be limited to, a supplier,
10 wholesaler, distributor or retailer involved in the sale or distribution in
11 this state of an energy resource;

12 [(3) "Abnormal market disruption" refers to any stress to an energy
13 resource market resulting from weather conditions, acts of nature,
14 failure or shortage of a source of energy, strike, civil disorder, war,
15 national or local emergency, oil spill or other extraordinary adverse
16 circumstance.]

17 (3) "Additional costs" means all replacement and transportation

18 costs and taxes incurred by a person within the chain of distribution;

19 (4) "Gross disparity" means an increase of more than fifteen per cent
20 in the price of an energy resource;

21 (5) "Unconscionably excessive" means a price that represents a gross
22 disparity between the price of an energy resource when compared to
23 the highest price such energy resource was sold or offered for sale by
24 the seller in the usual course of business during the seven days
25 immediately prior to the declaration by the Governor of an energy
26 resource market disruption emergency pursuant to subsection (e) of
27 this section.

28 (b) No seller during any [period of abnormal market disruption]
29 energy resource market disruption emergency declared by the
30 Governor pursuant to subsection (e) of this section, or during any
31 period in which [an imminent abnormal market disruption] such
32 emergency is reasonably anticipated shall sell or offer to sell an energy
33 resource for an amount that represents an unconscionably excessive
34 price.

35 (c) Evidence that (1) the amount charged represents a gross
36 disparity between the price of an energy resource that was the subject
37 of the transaction and the price at which such energy resource was
38 sold or offered for sale by the seller in the usual course of business
39 immediately prior to [(A) the onset of an abnormal market disruption,
40 or (B)] an energy resource market disruption emergency declared by
41 the Governor pursuant to subsection (e) of this section, or any period
42 in which [an imminent abnormal market disruption] such emergency
43 is reasonably anticipated, and (2) the amount charged by the seller was
44 not attributable to additional costs incurred by the seller in connection
45 with the sale of such product, shall constitute prima facie evidence that
46 a price is unconscionably excessive.

47 (d) This section shall not be construed to limit the ability of the
48 Commissioner of Consumer Protection or the courts to establish
49 certain acts or practices as unfair or unconscionable in the absence of

50 [abnormal market disruptions] an energy resource market disruption
51 emergency declared by the Governor pursuant to subsection (e) of this
52 section.

53 (e) In the event of a state-wide or regional shortage or threatened
54 shortage of an energy resource due to an abnormal market disruption
55 resulting from a natural disaster, weather conditions, acts of nature,
56 strike, civil disorder, war, national or local emergency or other
57 extraordinary adverse circumstance, the Governor may proclaim that
58 an energy resource market disruption emergency exists. Upon the
59 declaration of such emergency, the Governor may in connection
60 therewith issue orders designating an energy resource to be in short
61 supply or in danger of becoming in short supply in the state or in a
62 specific region of the state and imposing price restrictions or rationing
63 with respect thereto. Prior to the issuance of such an order, the
64 Governor shall make written findings that there is an abnormal market
65 disruption, that the energy resource is in short supply or is in danger
66 of becoming in short supply due to such disruption, that the energy
67 resource is essential to the health, safety and welfare of the people of
68 the state, and that the imposition of price restrictions on the energy
69 resource or rationing of such resource is necessary to assure the health,
70 safety and welfare of the people of the state.

71 (f) Any proclamation or order issued pursuant to this section shall
72 become effective upon its filing in the office of the Secretary of the
73 State and with the clerks of the Senate and the House of
74 Representatives. Such proclamation or order shall be published in full
75 at least once in a newspaper having general circulation in each county,
76 provided failure to publish shall not impair the validity of such
77 proclamation or order. Unless disapproved in accordance with the
78 provisions of subsection (g) of this section, any proclamation or order
79 shall remain in effect until the Governor proclaims an end to the
80 emergency or until ninety days after the date of the proclamation of
81 the emergency, whichever occurs first.

82 (g) Any proclamation or order issued pursuant to this section may

83 be disapproved by a majority vote of each house of the General
84 Assembly. Any such disapproval shall become effective upon filing
85 notice of such action with the office of the Secretary of the State.

86 (h) Any natural person, trade association, corporation or other
87 entity may register with the Commissioner of Consumer Protection as
88 an agent for the purpose of being notified by said commissioner or
89 said commissioner's agent in the event the Governor declares an
90 energy resource market disruption emergency pursuant to subsection
91 (e) of this section. Such natural person, trade association, corporation
92 or other entity shall be notified of such emergency by said
93 commissioner or said commissioner's agent in an expeditious manner
94 when the Governor declares an energy resource market disruption
95 emergency.

96 (i) A violation of the provisions of subsection (b) of this section shall
97 be deemed an unfair or deceptive trade act or practice under
98 subsection (a) of section 42-110b.

99 Sec. 2. Section 16a-23 of the general statutes is repealed and the
100 following is substituted in lieu thereof (*Effective July 1, 2006*):

101 (a) No person engaged in the business of refining petroleum into
102 gasoline and furnishing gasoline to retail distributors of gasoline for
103 sale to the public in this state shall fail to furnish gasoline to
104 independent retail distributors of gasoline in this state, whether or not
105 franchised by such person, at wholesale prices in reasonable quantities
106 as long as [he] such person continues to furnish gasoline to retail
107 distributors of gasoline in this state which are wholly owned by [him]
108 such person or operated under a franchise granted by [him] such
109 person.

110 (b) It shall constitute, prima facie, a violation of the provisions of
111 subsection (a) of this section for any such person (1) during any
112 calendar month beginning after July 1, 1973, to deliver to independent
113 retail distributors of gasoline in this state a percentage of the total
114 gallons of gasoline delivered by [him] such person to all retail

115 distributors of gasoline in this state during that month which is lower
116 than the percentage of the total gallons of gasoline delivered by [him]
117 such person to all retail distributors of gasoline in this state during the
118 period from July 1, 1971, to June 30, 1972, which was delivered by
119 [him] such person to independent retail distributors of gasoline in this
120 state during that period, or (2) to sell gasoline to independent retail
121 distributors of gasoline in this state at a price during any such month
122 which is greater than (A) the average price at which [he] such person
123 sold gasoline to such distributors during the period from July 1, 1971,
124 to June 30, 1972, increased by (B) a percentage equal to the percentage
125 by which the average price for gasoline sold during that month to
126 retail distributors of gasoline which are wholly owned by, or operated
127 under a franchise granted by [,] that person exceeds the average price
128 for gasoline sold to such distributors during the period from July 1,
129 1971, to June 30, 1972.

130 (c) No producer or refiner of petroleum products who is subject to
131 the provisions of section 14-344a and furnishes gasoline or special fuel
132 to a retail distributor in this state shall use a pricing system under
133 which the wholesale price paid for such gasoline or special fuel by
134 such retail distributor is determined based on the geographic location
135 of such retail distributor in any geographic zone in this state, or any
136 other system that would prevent retail distributors of gasoline or
137 special fuel from paying lower prices on an equal basis with other
138 retail distributors in this state. A producer or refiner of petroleum
139 products who is subject to the provisions of section 14-344a and
140 furnishes gasoline or special fuel to a retail distributor in this state
141 shall sell gasoline and special fuel at the posted rack price of such
142 producer or refiner on the date and time of pickup for delivery of such
143 gasoline or special fuel. Such producer and refiner shall not
144 discriminate from the posted rack price of such gasoline or special fuel
145 charged to retail distributors in this state, except to offer discounts or
146 rebates that may be determined by such producer or refiner from time
147 to time. Such discounts or rebates shall be disclosed by the producer or
148 refiner to the retail distributor in advance and shall be offered by the

149 producer or refiner to all of its retail distributors on equal terms and
150 conditions. When offered, all such discounts or rebates and the time
151 period they are offered shall be listed as a separate line item entry on
152 each invoice. The provisions of this subsection shall expire on July 1,
153 2008.

154 [(c)] (d) A violation of the provisions of subsection (a) or (c) of this
155 section constitutes an unfair trade practice [within the provisions of
156 chapter 735a] pursuant to subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	42-234
Sec. 2	<i>July 1, 2006</i>	16a-23

ET *Joint Favorable Subst.*